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Also, the Hon. Chairman, the hon. the Leader of the Opposition and the Deputy Leader of the Opposition have the Syndicate meeting.

MR. CHAIRMAN : Thank you for mentioning my name also. But this job is more important for me. Well, the House will meet tomorrow, if we do not finish the work to-day.

III.—ANNOUNCEMENT *RE* MESSAGE FROM THE ASSEMBLY.

MR. CHAIRMAN : I have to announce to the House that I have received the following message from the Hon. Speaker, Madras Legislative Assembly, dated 18th February 1959 :—

" In accordance with rule 130 of the Modras Assembly Rules, I transmit a copy of the Madras Open Places (Prevention of Disfigurement) Bill, 1959 (L.C. Bill No. 8 of 1958), as passed and agreed to by the Assembly on the 18th day of February 1959, without any amendments and signed by me."

IV.—GOVERNMENT BILL.

THE MADRAS GENERAL SALES TAX BILL, 1959
(L.A. BILL NO. 6 OF 1958)—*cont.*

* SRI M. PATANJALI SASTRY : Sir, I wish to make some observations.

MR. CHAIRMAN : We have finished the first reading of the Bill.

* SRI M. PATANJALI SASTRY : If it is not objectionable, I shall make some remarks.

MR. CHAIRMAN : As and when the clauses are taken up, the hon. Member may offer his remarks. The first reading is over. We are now in the stage of clause-by-clause discussion. Each clause will be taken up separately and the hon. Member may then speak on any of them.

Clause 2.

MR. CHAIRMAN : The motion is—

'That clause 2 do stand part of the Bill.'

* SRI P. S. KRISHNASWAMI AYYANGAR : Sir, I move the following amendment :— 3-40 p.m.

'In clause 2, after the word " cash " wherever it occurs, insert the word " paid ".'

The amendment was duly seconded.

* SRI P. S. KRISHNASWAMY AYYANGAR : Sir, clause 2 gives the definition of a number of terms used in the Bill. In several clauses several categories of consideration are mentioned.

[Sri P. S. Krishnaswamy Ayyangar] [19th February 1959

Cash consideration also is mentioned. There the expression used is " for cash or for deferred payment ". Therefore, evidently the word ' cash ' has been used for ready cash paid at the moment when the bargain is struck, and for cash to be paid in future the expression used is " deferred payment ". But, then, for cases of cash paid in advance, before the bargain is struck, there is no provision made. So, if the word " paid " is added on to " cash ", it will indicate cash paid in advance or cash paid at the time when the bargain is struck and, for cash to be paid in future, there is the expression " deferred payment ". I am not weaving from imagination. I have got support from a Statute. The Transfer of Property Act defines " sale " as transfer of property in exchange for price paid or promised. Price paid would include cash paid in the past and cash paid at the time on the spot. " Price promised " would denote deferred payment, that is, " credit transactions." For " deferred payment " the expression used in the Transfer of Property Act is " price promised." I shall give an illustration to explain my point. There are milk supply co-operative societies. They receive cash in advance and issue coupons. At the time when we buy milk, we only deliver the coupons and do not pay hard cash or ready cash. In that case, we have already made the payment and we are simply delivering the coupon, which is not cash, and for that we get milk. Such an item of consideration is not included in this. So, to make it comprehensive and to remove that lucuna, I have suggested the addition of the word " paid " after " cash ".

* SRI M. PATANJALI SASTRY : Sir, I want to say a few words.

MR. CHAIRMAN : On this amendment?

* SRI M. PATANJALI SASTRY : Not exactly on this amendment, Sir. But I want to speak on some of the clauses. I am sorry I was not in the station at the time of the first reading.

MR. CHAIRMAN : If the hon. Member wants to say anything special on the Bill itself, I shall give him an opportunity at the time of the third reading. Now he can speak on the clause alone.

* SRI M. PATANJALI SASTRY : Sir, I am not concerned with the Government's policies. Because these are complicated matters, I do not desire to offer any remarks as to the policies underlying the Bill. I want to speak only on certain clauses. Now, the definition of " dealer " does not seem to include, on a proper reading, one who executes a works contract. On the other hand, there are indications in the Bill in clause 2 itself that a transfer of property in goods involved in the execution of a works contract comes within the definition of " sale ". But unless the person who executes the works contract is included in the definition of " dealer ", there would not be a complete scheme to catch him. For instance, Explanation (2) to the clause on page 4 below the definition of " turnover " assumes that the man who executes

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a works contract is a dealer. It is stated, 'The amount for which goods are sold shall, in relation to a works contract, be deemed to be the amount payable to the dealer. . .' But when you turn to the definition of "dealer", the man who executes a works contract is not brought in. Therefore, the definition of "dealer" must be made logically complete. That is one submission I make for the consideration of the Hon. Minister. No doubt, "sale" includes a transfer of property in goods involved in the execution of the contract. But when you turn to the definition of "dealer" the man who executes a works contract is not included. The man who executes a works contract may not always be carrying on a business of sale, buying and selling. You may rope him in by adding to the definition of "dealer" the words "and includes a person who executes a works contract" or something of the kind.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, the amendment of the hon. Member Sri Krishnaswamy Ayyangar is unacceptable because if we substitute the word "paid" for "cash", as the clause now stands, it won't make any reading at all. There will have to be further amendments to carry out what he wants to be done with regard to this particular clause. The clause as it stands reads "whether for cash or for deferred payment". If you substitute the word "paid" in every place where you have the word "cash", then it will read "whether for paid or for deferred payment". Therefore, the amendment as given is not acceptable at all.

As regards the principle behind it, I wish to submit that the Act as it now stands has the same definition with regard to "sale", that is, it contains the expression "for cash or for deferred payment". The validity of the Act has not been challenged, it has been interpreted and considered by the Courts all these twenty years and no difficulty has arisen so far as this particular language is concerned. We should not attempt to change a Statute unnecessarily giving the impression thereby that our intention is different.

Then, with regard to the question raised by the hon. Member Sri Patanjali Sastry, I desire to point out that we are really in difficulty with regard to the taxation of these works contracts. In one case the Supreme Court held that the tax levied in respect of immovable works contracts, that is, contracts in respect of immovable property is excluded. But recently in a case of T. V. Sundaram Ayyangar and Sons—the judgment has not been received but we have received the report from the Government Pleader—the High Court seems to have questioned the validity of even the levy of sales tax in respect of works contracts relating to movable property. Therefore, I wanted to explain my difficulty. Until the matter is settled one way or the other, the Government will not be able to make up their mind in regard to the taxation.

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Then, with regard to the actual clause, the impression of the Government—I do not know how far it is correct—is that if in the course of any transaction there is buying and selling involved, then the person concerned becomes a dealer. That is why we have put in the clause here, " 'dealer' means any person who carries on the business of buying, selling, supplying or distributing goods. . . ." Either it must be a case of selling the component parts to make up a works contract or it must be a case of supplying component parts. The idea is that a person who is a contractor and who uses certain movable goods in the execution of the contract will be either selling them or supplying them. Therefore, he must come within the definition of a "dealer". That is the impression that the Government have. But, as I said, the question of levying taxes on these contracts involving supply or distribution of immovable goods is itself under consideratiton by the Government.

• SRI P. S. KRISHNASWAMY AYYANGAR : My amendment seeks to retain "cash" and add "paid" after the word "cash". However, I withdraw my amendment.

The amendment was, by leave, withdrawn.

Clause 2 was put and carried.

Clause 3.

3-50 p.m. MR. CHAIRMAN : The motion is—

'That clause 3 do stand part of the Bill.'

SRI K. BALASUBRAMANYA AYYAR : Sir, I beg to move the alternative amendments I have given notice of.

MR. CHAIRMAN : The hon. Member cannot move both of them. He can move only either of them. Alternative amendments cannot be moved. The hon. Member may select either of them and move it. That is the rule.

SRI K. BALASUBRAMANYA AYYAR : If I do not succeed in respect of exemptions, I can at least request reduction.

MR. CHAIRMAN : The hon. Member cannot move alternative amendments. That is supported by 'Rulings'.

SRI MOHAMED RAZA KHAN : Can we divide the amendments between two people?

THE HON. SRI R. VENKATARAMAN : That should have been done before.

SRI K. BALASUBRAMANYA AYYAR : My second amendment is that the rate shall be half per cent. I do not know, Sir, whether the Government will oppose both. (Laughter.) I thought

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that the Government might accept either the one or the other. Anyway, Sir, after your ruling, I choose my second amendment. Sir, I move the amendment which runs as follows :—

'In the proviso (i) to sub-clause (1) of clause 3, for the words "the rate shall be one per cent" substitute the words "the rate shall be half per cent".'

The amendment was duly seconded.

SRI K. BALASUBRAMANYA AYYAR: After the very plausible arguments advanced yesterday by the Hon. Minister, I thought very much whether I should move my amendment at all. I must tell you, Sir, that his arguments were very impressive. But, afterwards, I consulted a few merchants and also others. That is why I make bold to-day to move my amendment. Yesterday, the Hon. Minister said that after all, it would only work out to one naya paisa per measure of paddy, and asked, 'Why are you worried so much about it?' This is not merely a question of calculation in that way. The very fact that we have got sales tax gives rise to evasion of tax by people and thereby the black-market is increasing. That is the fact. Sir, economics does not work merely by statistics. That is what I would say. Political economy does not depend only on statistics. There is the human motive always operating in every transaction. That is very natural. That is why John Erskine who was against political economy said 'Economy is a dismal sign'. He was a moralist. Therefore it is I am stating that the fact that there is a tax on foodgrains somehow induces big dealers to evade tax and black-marketing is also increasing. I have enquired of many merchants about it and that seems to be the fact so far as trade is concerned. And once you give room for black-marketing, the price rises and especially if there is stock which is built up either by the Government or by others, you will find rise in price on some pretext or other. Therefore, there is no question of logical connection between the two. It is a human tendency and element. Therefore, why should we in this State give rise to any of these involved considerations and why not once and for all try to find out whether we can exempt foodgrains from this tax and put an end to all these tendencies? For the present of course, Government may lose some revenue.

When Control was introduced, Mahatmaji said that he opposed it on moral grounds. Once you have got Control, you will find moral degeneration of the people. That will go on. But in spite of that, on economic considerations we were having Control for a large number of years until the Government boldly came forward to abolish it in 1952. After the Control was abolished, black-marketing also was not there. Like that there are some considerations here also. As a matter of fact, you find a large number of transactions taking place without the sales coming into accounts. That is because they want to get some more profit by evading the tax. Somehow or other, the consumer is affected. That is my point. Of course, logically arguing, it may

be all right, when the Hon. Minister said, 'I do not find that there is much hardship in the consumer paying a few pies more'. Even that is now working at half an anna per measure. They charge Rs. 1–4–6 per measure. That is the price of rice here. They charge half an anna as sales tax. The Hon. Minister says that it is only one pie. But still rice is being sold at a high price and they charge half an anna as sales tax. Afterwards, you may try to control it, of course. Why should we go into all these troubles and make people lose their morals? Therefore it is that I say that it is better you exempt foodgrains from tax. If it is not possible, at least you try to reduce the rate to half per cent. I have moved my alternative amendment so that we might not rub the Government on the wrong side.

This is a matter in which more arguments are not needed. Many people are of the opinion that it will do good. Of course, more than that I cannot say here. But, as a matter of fact, I tried to enquire of a number of rice dealers because I was impressed with the very plausible arguments of the Hon. Minister. I told them that the Hon. Minister argued like that and that he seemed to be perfectly allright. But they said that then there would be the tendency to evade tax. I hope the hon. Member Sri V. V. Ramaswami will agree with me that this will give rise to such a tendency among the traders. If he thinks otherwise, I do not want openly to talk about it here. This gives rise to increase in price by some means or other. Because big dealers have to pay a large amount of tax, they somehow try to see that they escape. That is why I say, 'Let these foodgrains alone be kept above all these considerations once and for all'. Our State was the first to take off this Control. At that time, you all might remember, Sri Kidwai came here and the then Chief Minister had a long talk with him. Everybody knows about that and I do not want to remind the House about it again. In the same way, let us try to do it. Even the Expert appointed by the Government, Dr. Lokanathan, is in favour of half per cent being imposed. I have got his support recorded in the report which has been issued by him. For these reasons, I have moved an amendment that the rate shall be half per cent instead of one per cent.

Sri T. P. Srinivasavaradan rose to move his amendment.

MR. CHAIRMAN : Sri K. Balasubramanya Ayyar, Sri V. V. Ramaswami and Sri T. P. Srinivasavaradan have given notice of three identical amendments. Already Sri K. Balasubramanya Ayyar has moved his amendment and so, there is no point in moving the other two amendments. If the hon. Member wants to speak, he can do so.

4 p.m. SRI T. P. SRINIVASAVARADAN : Mr. Chairman, the hon. Member Sri Balasubramanya Ayyar presented one aspect. I am going to present another aspect. The reason why we want to fix half per cent is this. As pointed out yesterday, in 1939 the general

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rate of multi-point tax was half per cent. Yesterday, no doubt, the Hon. the Minister for Industries pointed out that by raising it to one per cent, there would not be much burden on the consumer. I should like to point out, Sir, that in 1939 rice was sold at three measures a rupee. Now, for Rs. 1–4–0 we are getting one measure. The man who had previously spent Rs. 100 on foodgrains has to spend now nearly Rs. 350. The cost of living has gone up three and a half times. In 1939, for Rs. 100 he paid half a rupee. Now, for Rs. 350 he has to pay from Rs. 1–12–0 to Rs. 2. So, from each consumer, we are now getting Rs. 1–12–0, and not that half a rupee. So, each consumer now pays more. The Hon. Minister will excuse me when I say that there is a mathematcial fallacy in his argument. He said that there was not much increase. I paid half a rupee then and am paying now Rs. 1–12–0. The cost of living has risen by three and a half times and the income also has risen by three and a half times. If the cost of living had remained the same, that is to say, if I can purchase foodgrains for Rs. 100 in 1959, and if you raise the tax to one per cent, it does not matter, but the cost of living has risen very high. Therefore, I say, even if you keep it at half per cent, you are not going to lose but perhaps you will get more.

Another thing which I want to point out is this. It will have a psychological effect upon the consumers. The reduction may be very small. Out of the tax on foodgrains at least the Government are not anxious to make much revenue. For these reasons, I gave notice of my amendment and the Hon. Minister can easily accept it. The Government are not going to lose much. On the other hand, as the prices have increased, you are getting more and more. You know, Sir, pulses—dhall—are now sold at Rs. 1·50 a measure. In 1939 they were sold for six annas. The cost of everything has risen. You are getting three or four times now from these consumers. Even if it is half per cent, you will get four times. I support this amendment.

* **Sri B. K. NALLASWAMI** : மன்றத் தலைவர் அவர்களே, நேற்று அமைச்சர் அவர்கள் பேசியதைப் பத்திரிகையில் வாசித்தேன். பட்டிணத்தில் இருப்பவர்களில் 20 சதவிகிதத்தினர்தான் வரி கட்டுகிறார்கள் என்பது அவருடைய வாதத்தில் ஒன்று. அது எனக்குச் சரியாகப் புரியவில்லை. பட்டிணத்திலும் ஏழைகள் நிறைய இருக்கிறார்கள். பட்டிணத்தில் இருப்பவர்கள் 3 முனைகளில் வரி கட்டவேண்டியிருக்கிறது. ஒன்று நெல்லுக்கு. அடுத்தது மில்லிலே அறைப்பவர்களிடம் ஒரு வரி. கடைசியாக விற்பவர்களுக்கு ஒரு வரி. ஆகவே 3 சதவிகித வரி பட்டிணத்தில் இருப்பவர்கள் கொடுக்க வேண்டிய நிலைமைக்கு வந்துவிடுகிறார்கள். இதனால் கருப்பு மார்க்கெட் ஏற்படுகிறது என்று நமது எதிர்க் கட்சி உதவித் தலைவர் அவர்கள் சொன்னார்கள். அதற்குக் காரணம் அரிசி வியாபாரத்தில் லாபம் மிகவும் குறைவு. அரிசி மில்தாரர்களிடம் நான் ரொம்ப நெருங்கிப் பழகியிருக்கிறேன். அவர்களுக்கு ரொம்பக் குறைவாக லாபம் கிடைப்பதால், இப்பொழுது போடப்படுகின்ற ஒரு சதவிகித வரியைக் கூட உண்மையில் கட்டமுடியாது. ஆகவே, என்ன நடக்கிறது என்றால், 4-ல் 1 பங்கைத்தான் காட்டுகிறார்கள். பாக்கியை மறைத்து விடுகிறார்கள். ஒரு மில்காரர் லாரி வாடகை வந்தால் போதும் என்று மில் நடத்துகிறார். அதே முறையில் இன்றைய நிலையில் மளிகைக் கடைக்காரர்களுக்குச் சாக்குத்

தான் மிச்சம். அந்த முறையில் ஒரு மூட்டைக்கு 8 அணாதான் கிடைக்கும். ஒரு சதவிகிதம் என்றால் எவ்வளவு வருகிறது என்று கணக்கிட்டுப் பார்க்க வேண்டும். ஒரு மூட்டை 40 ரூபாய் என்றால் வரி 1 சதவிகிதம் என்றால் 6, $6\frac{1}{2}$ அணா ஆகிறது. ஆகவே கடைக்காரனுக்கு மிஞ்சுவது என்ன என்பதைச் சிந்தித்துப் பார்க்க வேண்டும். என்னைப் பொறுத்த வரை, இந்த உணவுப் பொருள்களுக்கு விற்பனை வரி இல்லாமல் இருந்தால் நல்லது என்று சொல்வேன். சர்க்கார் நிதி நிலைமை இதற்கு இடம் கொடுக்கவில்லையென்றால், மிகக் குறைந்த பட்சமாக வரி இருக்கவேண்டும். அதுவும் கடைசி முனையில் இருக்கக்கூடாது என்று கூற விரும்புகிறேன். உண்மையில் மளிகைக் கடைக்காரர்களால் இதற்குக் கணக்குக் கொடுக்க முடியாது. அரிசிக்கு விற்பனை வரி கொடுப்பது என்று இருந்தால், மளிகைக் கடையே நடத்த முடியாது. யாரை வேண்டுமானாலும் கேட்டுப் பாருங்கள். அமைச்சர் அவர்கள் தன்னுடைய நண்பர்களைக் கேட்டுப் பார்க்க வேண்டும். கடைசி முனையில் விற்பனை வரி இல்லாமல் இருக்கவேண்டும். விற்பனை வரி இருக்கிற காரணத்தால் மளிகைக் கடைக்காரர்கள் சரியான கணக்குக் காட்ட முடிவதில்லை. விற்பனை வரி அதிகாரிகளுக்கும் இது தெரியும். தெரிந்து, விட்டுக்கொண்டிருக்கிறார்கள். அவர்கள் மளிகைக் கடைக்காரர்களின் நிலைமையை அறிவார்களாதலால், அந்த நிலைமை இருந்து வருகிறது. விற்பனை வரி இருந்துதான் தீர வேண்டுமென்றால், குறைந்தபட்சமாகவாவது இருக்கட்டும். கடைசி முனையில் வேண்டாம். இரண்டு ரூபாய்க்கு அரிசி வாங்குவதற்கு, அரை ரூபாய்க்கு அரிசி வாங்குவதற்கு எல்லாம் விற்பனை வரி நிச்சயமாக வாங்க முடியாது. ஆகவே, அரசாங்கம் இதை நன்றாகச் சிந்தனை செய்து பார்த்து கடைசி முனையில் வரி வாங்க வேண்டாமென்று கேட்டுக்கொண்டு என்னுடைய பேச்சை முடித்துக்கொள்ளுகிறேன்.

Mr. CHAIRMAN : The hon. Member Sri V. V. Ramaswami may move the amendment given notice of by him.

* **Sri V. V. RAMASWAMI** : Sir, I move the following amendment :—

"In sub-clause (1), for the words ' two per cent ', substitute the words ' one per cent '."

Sri T. P. SRINIVASAVARADAN : I second the amendment, Sir.

* **Sri V. V. RAMASWAMI** : தலைவர் அவர்களே, பொதுவாக விற்பனை வரி இப்பொழுது எல்லாச் சரக்குகளுக்கும் 100-க்கு 2 ரூபாய் வீதம் விதிக்கப்படுகிறது. அதை 1 பெர்சண்ட் ஆகக் குறைக்க வேண்டுமென்பது என்னுடைய திருத்தம். இப்பொழுது உணவுப் பொருள்களுக்கு வரி விலக்கு முழுமையாகக் கொடுக்க வேண்டுமென்று கேட்டோம். அப்படி இல்லாவிட்டாலும் அரை பெர்சண்ட் ஆகவாவது குறைக்க வேண்டுமென்பது என்னுடைய விருப்பம். உணவுப் பொருள் என்றால் அரிசி, நெல் மாத்திரம் அல்ல. மற்ற எத்தனையோ சரக்குகள் பட்டியலில் சேர்ந்துவிடுகின்றன. உணவுப் பொருள்களுக்கு வரி அறவே இருக்கக் கூடாது என்பது என்னுடைய கோரிக்கை. கிராமத்திலுள்ள விவசாயிகள் நெல்லைப் பூராவுமே உபயோகிக்க முடியாது. 100-க்கு 80 விகிதம் விற்றுவிடுகிறார்கள். விற்றுத்தான் மற்றக் காரியங்களுக்கு அவர்கள் செலவு செய்ய முடியும். டாக்டர் லோகநாதன் அறிக்கைப்படி இந்த இனத்திலிருந்து சர்க்காருக்கு 45 அல்லது 50 லட்சம் ரூபாய்தான் வருமானம் வரும் என்று தெரிகிறது. மொத்தம் இந்த விற்பனை வரியின் மூலமாக சுமார் 14 கோடி ரூபாய் வரும் என்று அமைச்சர் அவர்கள் சொல்லும்போது, ஜனங்களுடைய கோரிக்கைக்கு இணங்க இந்த ஒரு அரைக் கோடியை விட்டுக் கொடுக்கக் கூடாதா என்று கேட்க விரும்புகிறேன். இந்த இனத்தில் வியாபாரிகளுக்குக் கிடைக்கும் லாபம் மிகவும் குறைச்சல்.

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ஆகவே, வரி கொடுக்காமல் இருக்க என்ன வழி என்று பார்த்து அந்த வழியில் இறங்கவேண்டியிருக்கிறது. ஆகவே, அதையெல்லாம் தவிர்க்க அரை பெர்சண்டாகக் குறைக்க வேண்டுமென்று கேட்டுக்கொள்கிறேன். இதைப்பற்றித் திரும்பத்திரும்ப வாதம் செய்ததால் மனம் தளர்ந்திருந்தாலும் சொல்ல வேண்டிய கடமையைச் செய்து முடித்துக்கொள்ளுகிறேன்.

MR. CHAIRMAN : The hon. Member may move the other amendments also.

* SRI V. V. RAMASWAMI : Sir, I move the following amendments :—

"In the proviso (ii) to sub-clause (1) of clause 3, *delete* the words "exclusively" and "except foodgrains", occurring in lines 1 and 2 respectively."

"In sub-clause (2) of clause 3, for the words "whatever be the quantum of turnover in that year", substitute the words "if his total turnover for a year is not less than Rs. 10,000."

SRI K. BALASUBRAMANYA AYYAR : I second the amendments, Sir.

* SRI V. V. RAMASWAMI : இந்த இடத்தில் ஒன்று சொல்ல விரும்புகிறேன். கிளாஸ் 3-ல் உள்ள சப்-கிளாஸ் (1)-ன் பிரிவு (II)-இன்படி ஒரு வியாபாரி 30 ஆயிரம் ரூபாய் வரைக்கும் வியாபாரம் பண்ணினாலும் அதாவது " dealers dealing exclusively in one or more of the goods enumerated in the foregoing clause except foodgrains, rice products, wheat products and milk "க்கு விலக்கு உண்டு என்று சொல்கிறார்கள். பத்தாயிரம் ரூபாய் வரையில் எந்தச் சரக்கில் வியாபாரம் பண்ணினாலும்—மல்டி பாயின்ட் வந்துவிட்டால் எல்லாச் சரக்கும் சேர்ந்துவிடும்—உணவு தானியங்களை எடுத்துவிட்டு, எல்லாச் சரக்குகளையும் எடுத்துவிட்டு முப்பதாயிரம் வரைக்கும் விலக்கு என்பது எனக்குப் புரியவில்லை. சாதாரணமாக மாதம் நூறு ரூபாய்க்கு வியாபாரம் பண்ணுகிறவர்களுக்குக்கூட " டோடல் டர்ன்ஓவர் " 30 ஆயிரம் வந்துவிடும்.

ஒரு நண்பர் கணக்கு இல்லாமல் வியாபாரம் பண்ணுகிறீர்களே என்றார். கணக்கு வைக்காமல் வியாபாரம் பண்ண வேண்டும் என்பது நோக்கம் அல்ல. கணக்கு வைக்க முடியாமல் இருக்கிறது என்று சொல்ல விரும்புகிறேன். பலமுனை வரி என்று போட்டிருக்கக்கூடிய பொருள்களுக்குக் கூட யாரிடத்திலிருந்து வரி வாங்க முடிகிறது ? வாங்க முடியவில்லை. வாங்குகிறதும் இல்லை. மற்றப் பொருளில் வியாபாரம் பண்ணுகிறவர்கள் வாங்குகிறார்கள். ஆனால் இங்கே வியாபாரிகள் தன் கைப்பொறுப்பாகத்தான் போடுகிறார்கள். வெற்றிலை, பாக்கு, புகையிலை, பீடி, சிகரெட் என்று வியாபாரம் பண்ணிக்கொண்டே இருக்கும்போது எப்படி பில் போடுவது, என்ன கணக்கு எழுதுவது ? அவன் சாமானை விற்றுக்கொண்டே போவானே தவிர எழுத முடியாது. ஷெட்யூலில் ஒரு முனை வரி என்று போட்டிருக்கக் கூடிய பொருள்களுக்கு—ஒருமுனை வரி தான் என்றாலும் Whatever be the quantum of turnover என்று பின்னே போட்டுவிட்டார்கள். அதனால் ஐநூறு ரூபாய்க்குத் தான் வியாபாரம் ஆகிறது என்றாலும் கூட அவன் வரி கட்டித்தான் ஆகவேண்டும். இப்படி ஒரு முனை வரி என்று கொண்டுவருவதில் என்ன கவர்ச்சி இருக்கிறதென்றுதான் தெரியவில்லை. (இண்டரப்ஷன்) நாங்கள் வரி கொடுக்கும்படியாக வராது என்றால் ஒப்புக்கொள்ளலாம். உங்களுக்கு வரி வராது என்றால் எனக்கு இல்லை. இப்படி ஒரு பக்கம்

சலுகை கொடுப்பது போலக் கொடுத்துவிட்டு மற்றொரு பக்கம் எடுத்துக் கொள்வதை என்றால் ஒப்புக்கொள்ள முடியாது. இதற்கு மேலும் என்றால் பேசுவதற்கு முடியவில்லை. கனம் அமைச்சர் அவர்கள் இதைக் கவனிக்கவேண்டுமென்று கேட்டுக்கொள்கிறேன்.

4-10 p.m. SRI MOHAMED RAZA KHAN : Sir, while supporting the amendments of both my hon. Friend Sri Balasubramanya Ayyar and my hon. Friend Sri Ramaswami, I would just like to make one or two observations. Of course, the Hon. Minister piloting the Bill was very careful in giving his reply. Incidentally, I may again pay my compliments to him. Wherever an argument was weak for him, he naturally, a clever politician that he is, evaded reference to that.

Sir, at the outset, let me say that as long as we speak on behalf of the Opposition, whatever observations we make on the general aspects of the case, it is not for the purpose of simply criticising the Government. Far from it. Another aspect is that we are also one with the Government in seeing that the finances of the State are not affected. But that cannot be the main point. The main consideration should be the capacity of the people to pay taxes and the difficulties involved. I make reference to this, because having read, as most of us have done, the Report of Dr. Lokanathan, I am drawn to two observations that he has made; they are important observations. One is—the Hon. the Minister for Industries also made a reference to it—that no commodity should be left without a tax, in a socialistic pattern of society, which expression the Hon. Minister cleverly used. Here again because it was to his advantage, he said that. He also said that everybody, was having the benefit of the developmental activities and that therefore, there was no question of exempting this or that commodity from tax. We accept it. Therefore, his first point was that we might have a single-point tax on some of the commodities and that on other commodities, it might be a multi-point tax. It was a very important thing. All kinds of evasion also should be checked. Therefore, Dr. Lokanathan recommended the drastic change of reducing the tax from two per cent to one per cent. I am sure a clever economist that he is, a good financier also, he went into the whole question of financial structure and it is not as if he simply made a recommendation like this. Then, I am sure, Sir, all the cards were placed before him, all information was placed at his disposal and he must have discussed with the Revenue Department, the Finance Department and the Board of Revenue the pros and cons of the whole question and finally come to the conclusion that the tax should be reduced from two per cent to one per cent, without at the same time affecting the finances of the State of Madras.

Sir, the second thing is with regard to foodgrains and other perishable commodities. He made a strong recommendation to levy a half per cent tax. With that the Hon. Minister agrees and we also agree. Really one concession made by the Hon. Minister —I do not have any objection to that—is to exempt, or keep the

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status quo in respect of, handloom goods. I think, if I am correct, even handloom goods should come within the purview of the Act. He also made a recommendation that nothing should be exempted from the operation of this Act. Therefore, when he made a recommendation that it should be half per cent, I take it for granted that he had made a thorough and clear study of the financial consequences of that recommendation. Now, with regard to foodgrains, it is taken to one per cent from half per cent. All right.

Sir, I am not competent to bring in party politics here. However, I think only recently Hon. Ministers have been saying that foodgrains and perishable commodities should be exempted as far as possible from tax. That was one of the subject-matters of their political, platform speeches.

Another thing is that during the period from 1948 to 1958 a number of items were exempted from the operation of the Act. But now they have to be taxed at one per cent under this clause. Therefore, I feel it may not affect the finances to the extent, unfortunately our Hon. Minister visualises. I appreciate his difficulties. But it is no good saying that if we do a little tinkering with the rate, it will affect the finances. Sir, if the Government are satisfied that the expert has gone into the whole question in all its aspects, I am sure the Hon. Minister will agree that there is a good deal of logic in the demands of both my hon. Friend Sri Ramaswami and my hon. Friend Sri Balasubramanya Ayyar. They are both always reasonable persons.

Here I would refer to one other thing also. Dr. Lokanathan has made one other observation. When once you go on working this Act, if you find that your finances are affected by Rs. 10,000 or Rs. 15,000 or Rs. 20,000, it is possible for you to raise the tax. It may prove a windfall also at times. There is therefore, always an alternative. You can come to this House and state the position and ask for an alteration in rates. If your finances are affected, you can come and say, " Our finances have gone down. We want to increase the rate ". Now, I do not know with what antecedents the Government are seeking power under clause 59. I know how the Minister was strong on that clause also. He made an observation that once he found that the finances were going down, he would always have the right—I use the word " right " advisedly— 4-20
to increase the rate. I am sure the Hon. Minister will consider p.m.
this aspect. I feel there is every reason and logic in the demand of the Opposition and the amendments moved from this side for the reduction of the rate from two per cent to one per cent and from one per cent to half per cent.

***Sri M. ETHIRAJULU** : கனம் சட்ட மன்றத்தலைவர் அவர்களே, நேற்றையதினம் கனம் அமைச்சர் அவர்கள் பதில் கூறுகையிலே, கம்பு, சோளம், கேழ்வரகு, தினை முதலிய தானியங்களை 30 சதம் உற்பத்தியாளர் எடுத்துக்கொண்டு, பாக்கியுள்ள 20 சதம்தான் பட்டணத்திலுள்ள மக்களுக்குப் போகிறது என்றார். ஆகவே, இதனால் பட்டணத்திலுள்ள மக்கள்தான் பாதிக்கப்படுகிறார்கள் என்றும் சொன்னார்கள். ஆனால்,

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பட்டணத்து மக்கள்தான் கிராமாந்திரங்களுக்கு வந்து கம்பு, கேழ்வரகு, சோளம், தினை முதலிய தான்யங்களை வாங்கிச் சென்று, மறுபடியும் கிராம மக்களுக்கு விற்கிறார்கள். அப்படிக் கிராம மக்கள் வாங்கிக்கொண்டு போகும்போது, 1 சதம் வரி கொடுக்கிறார்கள். கிராமாந்திரங்களில் வாழும் பெரும்பாலான மக்கள் ஏழை ஹரிஜனங்கள். பின் தங்கிய மக்களாகிய இவர்கள் அரிசி வாங்கிச் சாப்பிடுவதற்கு வசதியில்லாத நிலையில் இருப்பதால் முக்கியமாக இந்த தான்யங்களை வாங்கிச் சாப்பிடுகிறார்கள். ஆகவே, இந்த தான்யங்களுக்கு 1 சத வரி விதிப்பதினால் கிராமத்திலுள்ள ஏழை மக்கள்தான் மிகவும் பாதிக்கப்படுவார்கள்.

சர்க்கார் இந்த உணவு தான்யத்தின் மீது 1 சதம் வரி விதித்தால் 40 லட்சம் ரூபாய் வருமானம் வருவதாகக் கனம் அமைச்சர் அவர்கள் சட்ட மன்றத்திலே பேசும்போது சொன்னது எனக்கு ஞாபகம் வருகிறது. இந்த ஒரு சத வரியை அரை சதமாகச் செய்தாலும் 20 லட்ச ரூபாய் சர்க்காருக்கு வருமானம் கிடைக்க ஏதுவாக இருக்கும். ஆகையால், சர்க்கார் கிராம மக்களை முன்னிட்டுக் கம்பு, கேழ்வரகு, சோளம், தினை முதலிய தான்யங்களுக்கு முழுமையாக எடுக்காவிட்டாலும் ½ சத விகிதம் வரி விதிக்கலாமென்று கேட்டுக்கொள்ளுகிறேன்.

* SRI T. PURUSHOTHAM : Mr. Chairman, having heard the hon. Member Sri Mohamed Raza Khan, I should straightway say that while I generally support the amendments moved by the hon. Members opposite, I entirely disagree with the arguments advanced by the hon. Member Sri V. V. Ramaswami and so, I do not propose to support his amendment. I seconded the amendment of the hon. Member Sri K. Balasubramanya Ayyar and I am going to say a few words about it.

* SRI V. V. RAMASWAMI : ஈரோடு மாநாட்டில் பங்குகொண்ட ஸ்ரீ புருஷோத்தம் அவர்கள் ஒருமுனை வரியை ஆதரித்துப் பேசினார்கள் அல்லவா என்பதை அறிய விரும்புகிறேன்.

* SRI T. PURUSHOTHAM : I said most emphatically the other day that I believed that a single-point levy would be for the benefit of the merchants but I was taken aback, as I said during the debate in the first reading of the Bill, when the trade representatives came before the Select Committee and said that they would like to have a multi-point levy and not a single-point levy in various instances. So it is I have to revise my opinion. But with regard to the two per cent question, that is the general rate that has been agreed to by the Select Committee and I do not think that there is any case for reduction of the two per cent provided for general sales tax levy. With regard to foodgrains, fresh fruits, betels, plantains, etc., hon. Members would have noted in the proceedings of the Select Committee how I pleaded that a special concession should be shown with regard to these items and I also mentioned about it in my speech during the first reading of the Bill. I made an earnest appeal to the Hon. Minister that he should consider favourably the question of having the rate reduced from one per cent to half per cent. Even if he is not prepared to accept the amendment of the hon. Member Sri K. Balasubramanya Ayyar and reduce the rate from one per cent to half per cent in the case of foodgrains, fresh fruits, betel leaves, plantains, etc., I hope he will sympathetically consider if it is not possible to make a revision

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with regard to these items at a later stage. It is in that fullest hope that the Hon. Minister would favourably consider the point raised in this House that I support this particular amendment and I believe I have made my position clear.

* SRI V. V. RAMASWAMI : கனம் அமைச்சர் அவர்கள் சொல்ல வேண்டிய பதிலை நீங்கள் சொல்லிவிட்டீர்கள்.

SRI MOHAMED RAZA KHAN : Now, in the light of the speech of Sri Purushotham, we withdraw the first amendment and keep the amendment of Sri Balasubramanya Ayyar as the Government are going to accept it. (Laughter.)

THE HON. SRI R. VENKATARAMAN : When Sri Purushotham becomes the Government, the inference is legitimate. (Laughter.)

* SRI M. PATANJALI SASTRY : Mr. Chairman, Sir, there seems to be a more serious objection to clause 3 of the Bill because under the Constitution, as the Hon. Minister is aware, there are certain restrictions imposed upon the State's power in respect of sales tax. Article 286 deals with it. It says—

'No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(*a*) outside the State; or

(*b*) in the course of the import of the goods into, or export of the goods out of, the territory of India.'

Then, clause (2) of that Article says—

'Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).'

Now, turning to Central Act No. 74 of 1956, it lays down certain principles for determining this and in dealing with sales in the course of export, it says—

"A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export . . ." (We shall stop there because what follows is not relevant to my objection.)

Now, there may be sale even of goods situate inside the territory and where the contract takes place also inside the territory of the State. But still it may be, according to the language of the section, one "which occasions such export", that is to say, the sale may result in the actual export of the goods as where an agent of a non-resident dealer buys for export. There is no exemption of such sales from the levy of tax under this Act. Therefore, the charging section would seem to transgress the Constitutional prohibition in which case it would be unconstitutional and void. I

seek to bring this to the notice of the Hon. Minister in order to remedy the defect as it seems to me, because still there is time, instead of allowing the thing to be challenged in a Court of Law and getting the charging section scrapped because it is unconstitutional. Clause 9 seems to go further and positively contemplate the taxation of such sales because it says, "Stage of levy of taxes in respect of imported and exported goods". So, it contemplates a levy of sales tax on exported goods. Sub-clause (*b*) of clause 9 says—

'in the case of goods exported out of the State to any place outside the territory of India or to any other State in India, be deemed to conclude at the stage of sale or purchase effected immediately before the export of such goods.'

That is to say, where in the case of any goods tax is leviable at one point in a series of sales or purchases, such series shall in the case of goods exported out of the State to any place outside the territory of India be deemed to conclude at the stage of sale effected immediately before the export of such goods which may include such sale. The Bill, therefore, proposes to catch the sales of goods intended for export outside the territory of India at the stage in which goods are about to leave the territory of India and impose a tax thereon. Therefore, so far from prohibiting or excluding the sale of the goods exported outside the territory of India for the purpose of this tax, it seems to contemplate an actual imposition of tax on such goods. That, it seems to me, would be a grave objection to the Constitutional validity of the charging section. There is still time left and I hope the Government will consider this aspect seriously and clarify the position in accordance with the Constitution.

4-30 p.m. * THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, I shall take up the objection raised by the hon. Member Sri Patanjali Sastry first. The idea underlying Article 286 of the Constitution is that the State and the Centre should not both levy export duties or import duties because it is a tax on goods. Import duties and export duties are levied by the Central Government and they are within their exclusive jurisdiction. If we do not have Article 286, then each State will also levy export duties and import duties on the ground that it is a tax on sale of goods. It would be then argued, even though it is exported or imported, it is a sale of goods and sale of goods is within the schedule reserved for the States and, therefore, they are entitled to levy the tax. So, it is to prevent a levy of an export or import duty that Article 286 has been specifically provided. What the Sales Tax Act here seeks to do is that in respect of goods on which at one point of sale a tax is levied, we should determine that point at which the tax should be levied. You please look at clause 9 which says, "Where in the case of any goods tax is leviable at one point in a series of sales or purchases . . ." In order to determine at what point tax has to be levied, the law prescribes that the point at which the

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tax should be levied is the point of sale prior to the export or import.

SRI M. PATANJALI SASTRY : My point is that the State has no jurisdiction to levy tax on this, apart from the question of point of levy on account of Article 286.

* THE HON. SRI R. VENKATARAMAN : I very respectfully submit that what the State cannot tax is an export or an import. The State can always tax at any point prior to the export or import of an article.

SRI M. PATANJALI SASTRY : No law of a State shall impose a tax on the sale or purchase of goods where such sale or purchase takes place in the course of the import of the goods into, or export of the goods out of, the territory of India. And when is this supposed to take place? The Central Act provides that such a sale or purchase of goods shall be deemed to take place in the course of the export of goods out of the territory of India only if the sale or purchase occasions such export. If there is a sale of goods situate inside the State and where the contract to sell also takes place inside the State, then it is all right. But if the goods are intended to be exported outside the territory of India, it comes within the Constitutional prohibition. We have the prohibition under Article 286 along with the definition as to when a sale purports to take place in the course of export as explained in the section of the Central Act. Therefore, reading this with the Constitutional prohibition, the result is the State cannot impose tax upon goods if the sale or purchase occasions export. Now there is no such exemption in the charging section and, therefore, it covers a wider ground. It includes taxation of subjects which are outside the competence of the jurisdiction of the State Legislature.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, let me take a concrete illustration. A sells goods to B, and B sells goods to C and the sale of goods to C is for the purpose of export. The Act would be valid, if it levied a tax at the stage of sale to B. The Act would not be valid if it levied a tax at the point of sale to C. What clause 3 read with clause 9 tries to do is to tax, in the illustration I gave, at the point of sale to B.

SRI M. PATANJALI SASTRY : Will it not cover the sale by B to C also? That is my objection.

SRI K. BALASUBRAMANYA AYYAR : The Hon. Minister says that the sale from B to C occasions the export and that, therefore, it should not be taxed. But the sale from A to B may be taxed.

SRI M. PATANJALI SASTRY : Where is such an exemption as regards the sale from B to C? I can quote the concrete illustration given by the Hon. Minister himself. It only reinforces my point. Where is the exemption in the charging section, section 3 of the Act, in the concrete case cited by the Hon. Minister, of the

sale from B to C inside the State in respect of the goods also situate inside the State? Is there any exemption, I should like to know. In that case my objection falls to the ground.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, this Act has been in force and has been used for taxing goods for the last twenty years. It has not been challenged on the ground that the law provides for a possible levy of a tax when actually it has not been taxed. It is well understood that the tax is not levied on any transaction which occasions export. In that case the State cannot levy the tax and, therefore, we have not levied the tax. There is no question that the State is entitled to levy a tax, by virtue of a section in the Act, which it is not entitled to levy. Even if we had put in a clause here in this Bill covering such transactions, still the State cannot tax because it is bound by Article 286 of the Constitution. It is always subject to Article 286 of the Constitution. Therefore, I submit that it has to be read along with clause 9 which defines the point at which the State may levy the tax and the State has determined that the point prior to the export and the first point after the import will be a transaction in respect of which sales tax can be levied.

* SRI M. PATANJALI SASTRY : The learned Minister's explanation is that it must be read with Article 286. That was precisely the argument advanced in support of the validity of the Bombay Motor Sales Tax Act. But that has been negatived on the ground that the Act did not contain specific exemption to that effect and the Bombay High Court held that the whole thing was invalid because it was unconstitutional. If they incorporate such a provision, it will be all right.

THE HON. SRI R. VENKATARAMAN : I have nothing more to add. I cannot really measure up to the hon. Member.

* SRI M. PATANJALI SASTRY : I am suggesting this for the consideration of the Hon. Minister lest there should be difficulty in future. Sales tax legislation has been the subject of decision by the Supreme Court in a number of cases. With the guidance afforded by those decisions, we should be a little more careful. That is what I am saying.

* THE HON. SRI R. VENKATARAMAN : Sir, I have just mentioned the position. If the clause is used for levying a tax on any commodity in the course of export, then certainly the tax will not be valid and, therefore, it should not be levied. But merely because a commodity is intended for export, it should not escape taxation and, therefore, we have provided in clause 9 that the point of levy of the tax shall be the point of sale immediately prior to the sale which occasions the export.

4–40 p.m. Then, Sir, I shall deal briefly with the arguments regarding the reduction of tax and other amendments. In the first place, I wish to refer to the amendment of the hon. Member Sri V. V. Ramaswami. If any exemption was given in respect of levy of single-

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point tax, then the Government, I said, would not collect any tax at all. The principle in respect of single-point levy is that every sale should be liable to a single-point levy. The principle with regard to multi-point levy is that the turnover is taken as a whole and that exemptions are granted.

Now, let me give a concrete case. Suppose there is a furniture dealer and we give exemption even in the case of single-point levy up to Rs. 10,000. The furniture dealer will enter in his accounts several transactions from carpenters as if he has bought these things from the carpenters and then he will tell us that the first transaction is the transaction between the carpenters and the furniture dealer and that the first transaction being to the value of less than Rs. 10,000, he is not liable to pay any tax. It will give a loophole to evade payment of single-point levy except in the case of big manufacturers who produce goods in factory. In all other cases, it will lead to evasion. It is well understood, therefore, that wherever we levy a single-point tax, it is levied without any exemption.

Then, I need not labour the point which I made yesterday about the levy of sales tax at one per cent on other goods and half per cent on food and other articles. What I tried to explain yesterday was, even if we reduced the rate from one to half per cent, the relief for the people would be negligible. Therefore, even if we want to give something, it must have some effect. While it would involve loss of revenue, it would not bring about any corresponding benefit to the people. It may be that the traders feel a little relief but to support the reduction on the ground that it will benefit the people is not sustained either by previous experience or on merit. When we reduced the tax from two to one per cent, it did not appreciably reduce the price of food-grains. That was my point. I do not say that if we levy a tax, the price will not, to that extent, go up. In fact, I enter my objection to the argument advanced by the hon. Members Sri V. V. Ramaswami and Sri B. K. Nallaswami that it is the trader that pays and that he suffers on account of the levy of the sales tax; certainly, it is not the trader that pays nor do I want the trader to pay. I want to make it quite clear that the Government want that this tax should be a consumer tax and should be shifted and they do shift it either by way of sales tax explicitly or by adding it to the price of the commodity or by reducing the quantum of the goods sold.

SRI V. V. RAMASWAMI : காபியின் அளவைக் குறைக்கிறுர்கள்.

* THE HON. SRI R. VENKATARAMAN : In fact, the familiar example is that of people who sell 'pori kadalai'. They put some paper into the ollock and sell. Outside it looks very big, but inside it is only half. So, it is never paid by the trader. What the trader fails to understand is that in the course of these transactions he is collecting sales tax which is not his income. In fact,

Sir, it is common knowledge that the people do not make very great difference between the total turnover and the profit. They very often think that the whole thing that comes is coming to them and that it is their own money. In fact, there are many things which are included in one transaction, in one rate which you charge. Here, the unfortunate impression has gone round that they get a price which they would get even if there were no sales tax. I submit, Sir, that if there is no sales tax, to that extent the price will go down and to that extent, their gross income will go down and when they get a particular amount as gross income, they have got in that gross income itself the sales tax already included. They have, therefore, to make over the sales tax to the State which has occasioned or enabled the charging of a higher price. Competition amongst trade will compel people to reduce the price to the extent possible. If there is competition, naturally, they will try to bring it down and if there is no sales tax, the other person will compete and he will reduce the price and to that extent, the other traders also will have to reduce the price. So, if you remove or reduce the sales tax, the traders will not get the amount which they are now getting. What they get now includes sales tax and it has got to be paid. Therefore, the argument that their profit is only two annas and that we are charging a sales tax of eight annas on that is not valid. This is not an income-tax. This is a tax on the transaction, which is definitely passed on to the consumer. I deeply regret that even though it has a lot of psychological advantages, it is not sustainable either on principle or on the needs and exigencies of State.

MR. CHAIRMAN : I shall now put the amendment of Sri K. Balasubramanya Ayyar to the vote of the House. The question is—

"In the proviso (i) to sub-clause (1) of clause 3, *for* the words ' the rate shall be one per cent ', *substitute* the words ' the rate shall be half per cent '."

The amendment was put and the House divided thus :—

Ayes

Sri V. V. Ramaswami
,, M. Patanjali Sastry
,, K. Balasubramanya Ayyar
Sri Mohamed Raza Khan
,, John Asirvatham
,, K. M. Ramasamy Gounder

Noes

The Hon. Sri R. Venkataraman
Sri T. Purushotham
,, V. S. Balasundaram
,, A. M. Allapichai
Dr. Mahomed Usman
Srimathi Jothi Vencatachellum
,, Saraswathi Pandurangam
,, S. Manjubhashini
Sri A. Gajapathy Nayagar
Sri K. T. Kosalram
,, M. Ethirajalu
,, P. S. Krishnaswamy Ayyangar
,, K. V. Ramaswamy
,, B. K. Nallaswami
,, E. Janikirama Mudaliar
,, V. K. Palaniswamy Gounder
Srimathi Mary C. Clubwala Jadhav

Neutral—Nil

Ayes 6, Noes 17, Neutral Nil.

The amendment was **lost.**

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MR. CHAIRMAN : The question is—

'In sub-clause (1), *for* the words "two per cent", *subtitute* the words "one per cent".'

The amendment was put and lost.

MR. CHAIRMAN : The question is—

'In the proviso (ii) to sub-clause (1) of clause 3, *delete* the words "exclusively" and "except foodgrains", occurring in lines 1 and 2 respectively.'

'In sub-clause (2) of clause 3, *for* the words "whatever be the quantum of turnover in that year", *substitute* the words "if his total turnover for a year is not less than Rs. 10,000".'

The amendments were put and lost.

Clause 3 was put and carried.

Clauses 4 to 6 were put and carried.

Clause 7.

MR. CHAIRMAN : The motion is—

'That clause 7 do stand part of the Bill.'

SRI K. BALASUBRAMANYA AYYAR : Sir, I move the following amendment :—

"In sub-clause (i), after item (iii), add the following new items :—

'(iv) Where the total turnover is not less than twenty-five thousand rupees but is not more than thirty-five thousand rupees.	Three hundred and sixty rupees per annum.
(v) Where the total turnover is not less than thirty-five thousand rupees but is not more than fifty thousand rupees.	Four hundred and eighty rupees per annum.
(vi) Where the total turnover is not less than fifty thousand rupees but is not more than seventy-five thousand rupees.	Seven hundred and twenty rupees per annum.
(vii) Where the total turnover is not less than seventy-five thousand rupees but is not more than one lakh rupees.	Nine hundred and sixty rupees per annum'."

SRI MOHAMED RAZA KHAN : Sir, I second the amendment.

(Deputy Chairman in the Chair.)

SRI K. BALASUBRAMANYA AYYAR : Sir, in compounding you may raise the level from Rs. 25,000 to Rs. 50,000; I shall have no objection. The advantages I have already mentioned. The question whether it should be raised to Rs. 50,000 was debated in the Select Committee. The system of compounding has got various advantages. It makes the officers get the tax easily and also turns the psychology of the people who are paying the tax much more in favour of the Government, but slowly. Once they become accustomed to pay the tax, there would be very few cases of

evasion. That is the fundamental doctrine which I want to place before the House. The collection of this sales tax, apart from the merchants and a hierarchy of officers, is largely dependent upon the psychology of the people who pay the tax. That is why I referred to evasions, manipulation of accounts and all that. Compounding will help people to pay the tax much easier. They themselves have to make a statement and say that their income is so much. Then they will have to pay the tax. When they object, they will have to pay the tax and then object. The habit of paying thus comes into vogue. It will become a practice that you have to pay and then object. You can, if you want, enforce it up to Rs. 50,000 through I have put it at one lakh of rupees. This will avoid much expense on the establishment also. When I looked at the total expense that was incurred by the Government, I found it was a formidable figure. There are so many officers, Appellate Tribunals, Assistant Commissioners, Deputy Commissioners, the Board of Revenue and also the High Court. The High Court has to appoint two more Judges for the purpose of hearing these cases. There is the lawyer's fee, etc. All this will be reduced once you have compounding. People will get into the proper frame of mind and that is why I make bold to move these amendments. That is my submission, Sir.

* SRI V. V. RAMASWAMI : Sir, I move the following amendment :—

"At the end of sub-clause (1) of clause 7, add the following proviso :—

'Provided that where a dealer who has been permitted to pay tax at the rates mentioned in this sub-section, but whose total turnover is found to exceed Rs. 25,000, but does not exceed Rs. 30,000 shall be entitled to pay tax on the first Rs. 25,000 at the rates mentioned in this sub-section and on the balance at the rate specified in sub-section (1) of section 3'."

SRI K. BALASUBRAMANYA AYYAR : I second the amendment, Sir.

* SRI V. V. RAMASWAMI : மதிப்பிற்குரிய உப-தலைவர் அவர்களே, இப்போது தட்டுத் தட்டாக வரி கொடுப்பதற்குரிய முறையில் 25,000 ரூபாய் உச்ச வரம்பாக நிர்ணயிக்கப்பட்டிருக்கிறது. இதை 1 லட்சம் வரையாவது கொடுத்தால் கணக்குகள் வைத்துக்கொள்வதற்கும் இலகுவாக இருக்கும். பல தொந்தரவுகள் இல்லாமலும் இருக்கும். ஆகவே, அந்த வரம்பை உயர்த்த வேண்டுமென்று கேட்டுக்கொண்டோம். இதைக் கவனிப்பதாகவும் கனம் அமைச்சர் சொல்லியிருக்கிறார். இதை அனுதாபத்துடன் கவனித்து, இந்த வரம்பை உயர்த்த வேண்டுமென்று அரசாங்கத்தாரைக் கேட்டுக்கொள்கிறேன். ஒரு வியாபாரி வருஷத்தில் ரூ. 20,000-த்திலிருந்து 25,000 ரூபாய்க்குள் வியாபாரம் செய்திருந்தால் கம்பவுண்டட் ரேட்டில் 240 ரூபாய் வரி கொடுக்க வேண்டியிருக்கும். வியாபாரி வருஷத்தில் 25,000 ரூபாய்க்குமேல் வியாபாரம் செய்திருந்தால், கம்பவுண்டெட் ரேட்டில் வரி கொடுக்க முடியாது. கம்பவுண்டெட் ரேட்டில் வரி செலுத்துவதற்குரிய தட்டுகளின் உச்ச வரம்பை ஒரு லட்ச ரூபாயாகவாவது வைத்தால் நன்றாக இருக்கும். வருமான வரியில் இப்படித்தான் தட்டுத் தட்டாகப் பிரித்திருக்கிறார்கள். வருமானத்தில் முதல் 1,500 ரூபாய்க்கு

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வருமான வரி கிடையாது. 1,500 ரூபாய்க்கு மேலுள்ள வருமானத்திற்கு 3 சதவிகிதம் வரி. அதற்கு மேல் ஒரு தட்டுக்கு 6 சதவிகிதம் வரி. இம்மாதிரித் தட்டுத் தட்டாக வருமான வரி விகிதங்கள் நிர்ணயித்திருக்கிறார்கள். ஆகவே, கம்பவுண்டிங் விகிதங்களை அதிகமான தட்டுகளில் வைத்து, உச்ச வரம்பை 1 லட்ச ரூபாயாகவாவது நிர்ணயித்தால் நியாயமாக இருக்கும் என்று நினைக்கிறேன்.

* THE HON. SRI R. VENKATARAMAN : Mr. Deputy Chairman, I desire to invite the attention of the hon. Members of this House to the proceedings of the Select Committee where the Hon. Sri C. Subramaniam has made the remark that the system of compounding up to Rs. 25,000 would be worked for a year and the results studied and that if it was found satisfactory, it could be extended up to Rs. 50,000. The Hon. the Finance Minister has also stated that this might be included even as a recommendation of the Committee in their Report. Therefore, I desire to submit to the House that we are making an experiment in compounding and that we should watch the results and the consequences. The Government are sympathetic towards the proposal, but they cannot start in the very first year with a compounding limit of Rs. 50,000. Therefore, I would urge upon the hon. Members not to press this matter, but to leave it to Government to see what should be done after watching the results of the working of this new provision.

Then, so far as the amendment of the hon. Member Sri V. V. 5 p m.
Ramaswami is concerned, I must point out the difference between the Income-tax Act and the Sales Tax Act. There are different rates for different slabs in the Income-tax Act. Therefore, we see the higher incomes bearing proportionatetly heavier rate of tax at the appropriate levels. But in this case, there is no such provision. Therefore, if the transaction is large, then the persons who are having larger transactions should pay the particular tax levied. Alternatively, it would be a hardship in every case. Even in the Income-tax law people who are in the border line are affected. Therefore, it goes against the spirit of the Bill if we say that for a turnover up to Rs. 25,000, the rate will be a compounded rate. Therefore, I am unable to accept the amendments.

(Mr. Chairman in the Chair.)

SRI K. BALASUBRAMANYA AYYAR : So far as my amendment is concerned, I am glad that the Hon. Minister referred to the fact that even in the Select Committee Report they had given an assurance that after one year, they would review the working of the provision, and see if it worked satisfactorily—I hope it will but they themselves are not sure about it. I hope also that they will keep their assurance. I want to stress the fact that if, after one year, they find it not working satisfactorily, they will bring in an amendment. (Sri A. Gajapathy Nayagar : The Select Committee is all over.) Yes, but I am saying that the assurance is recorded in the Select Committee Report. What I want now is that the Minister should review this matter after one year. I do not press my amendment.

The amendment of Sri K. Balasubramanya Ayyar was, by leave, withdrawn.

MR. CHAIRMAN : I shall put the amendment of the hon. Member Sri V. V. Ramaswami to vote. The question is—

'At the end of sub-clause (1) of clause 7, add the following proviso :—

" Provided that where a dealer who has been permitted to pay tax at the rates mentioned in this sub-section, but whose total turnover is found to exceed Rs. 25,000, but does not exceed Rs. 30,000 shall be entitled to pay tax on the first Rs. 35,000 at the rates mentioned in this sub-section and on the balance at the rate specified in sub-section (1) of section 3." '

The amendment was put and lost.

Clause 7 was put and carried.

Clauses 8 to 11 were put and carried.

Clause 12.

MR. CHAIRMAN : The motion is—

'That clause 12 do stand part of the Bill.'

* SRI P. S. KRISHNASWAMY AYYANGAR : Sir, I move following amendment :—

'In sub-clause (3, *for* the words " a penalty not exceeding one and a half times the amount of tax due on the turnover that was not disclosed by the dealer in his return", *substitute* the words, brackets and figure " a penalty not exceeding one and a half times the difference between the tax assessed on the basis of his return and the tax assessed under sub-section (2) ". '

Sir, clause 12 relates to the imposition of penalty for submission of incorrect accounts. It says that a penalty extending to one and a half times the tax leviable on the turnover which has been discovered by the assessing officer shall be levied. It gives us a wrong impression that wherever there is any variation in the amount of turnover, there will necessarily be a variation in the amount of tax also. When it says that a penalty extending to one and a half times the tax leviable on the undisclosed turnover shall be imposed, it gives us the impression that every pie of the undisclosed turnover will bear a particular amount of tax over it. That is a wrong impression that is given by that expression. It is only to remove that wrong impression that I want to have this amendment. In the case of tax compounded, there is no such thing as the tax invariably varying with every change in the amount of turnover. If the disclosed turnover as well as the undisclosed turnover lie within the same slab, there will be no difference in

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the tax, and you cannot say that a particular amount of tax will be levied on the turnover that has been discovered by the assessing officer and that one and a half times the tax due on the turnover will be the penalty. I think I have not made myself clear.

The tax will vary according to the turnover only in cases where the tax has not been compounded and the wording in the Bill will be applicable correctly only when taxes not compounded are considered. It will not be applicable to cases of taxes compounded. Therefore, I want to have the amendment to substitute the words that the penalty shall be one " not exceeding one and a half times the difference between the tax assessed on the basis of his return and the tax assessed under sub-section (2) ". Sometimes when both the amounts of turnover fall within the same slab, there will be no penalty imposed. Even now it will be so as the wording stands. But the wording as it stands in the Bill gives us the impression that the incidence of taxation will fall on every pie of the turnover. To remove that wrong impression I have suggested my amendment.

The amendment fell through for want of a seconder.

Clause 12 was put and carried.

Clause 13 was put and carried.

Clause 14.

MR. CHAIRMAN : The motion is—

' That clause 14 do stand part of the Bill.'

* SRI P. S. KRISHNASWAMY AYYANGAR : Sir, I move the following amendment :—

' In the proviso to sub-clause (1), after the words " of the payment of " and before the words " tax admitted ", *insert* the figure, brackets and the word " (i) the " and add the following at the end :—

" or (ii) an amount which is not less than the admitted tax and which has been paid towards the tax assessed under sub-section (2) of section 12 or towards any such instalment of that tax as might have become payable or (iii) an amount which together with the amount if any paid towards the tax assessed under sub-section (2) of section 12 or towards any such instalment of that tax as might have become payable, will aggregate to not less than the admitted tax or any such instalment thereof as might have become payable ".'

' In sub-clause (2), after the words " any amount overpaid by the dealer " and before the words " shall be required " *insert* the following " together with any penalty, if any, imposed and collected under sub-section (3) of section 12 ".'

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'In sub-clause (2), *for* the words "or the further amount of tax, if any, due from him shall be collected in accordance with the provisions of this Act, as the case may be", *substitute* the following :—

"or the portion of the further amount of tax, if any, due from him, after adjustment towards it, of any penalty imposed and collected under sub-section (3) of section 12 shall be collected in accordance with the provisions of this Act." '

'In sub-clause (3) *for* the words, brackets and figures "Penalty, if any, imposed and collected under sub-section (3) of section 12", *substitute* the following :—

"The balance of the penalty, if any, imposed and collected under sub-section (3) of section 12, outstanding after any adjustment made under sub-section (2)". '

SRI B. K. NALLASWAMI : I second the amendments, Sir.

* SRI P. S. KRISHNASWAMY AYYANGAR : Sir, sub-clause (1) deals with an application for a fresh assessment revising the assessment that has been made on failure to submit a correct account. The sub-clause says that the application should be accompanied by proof of the payment of the admitted tax, the tax admitted as due by the dealer himself. Now, even before the application was made, the tax as assessed under clause 12 might have been collected and that would be more than the admitted tax. Under such circumstances, if he produces proof of the payment of such tax which is greater than the admitted tax, the application should be received. If he has already paid the tax assessed under clause 12 and if that amount happens to be larger than the admitted tax, he should not again be compelled to pay the admitted tax, ignoring the tax he has already paid. Again suppose the tax he has already paid falls short of the admitted amount. Then he should be compelled to make up the deficiency alone, and he should not be asked to deposit the entire admitted tax. If no amount at all has been deposited already, if no tax has been collected from him already, then alone the entire admitted tax should be deposited by him. It is to that effect that I have suggested the amendment.

5-10 p.m. The other amendments relate to the refund of the amounts. If there is an overpayment as evidenced by the tax he has already paid, then the amount overpaid will have to be refunded and when there is an overpayment, the penalty also will have to be refunded along with the overpaid amount. The entire penalty will have to be refunded and he should not be driven to institute separate proceedings for the recovery of the penalty. The penalty as well as the overpaid amount should be repaid at the same time without driving him to resort to separate proceedings to get a refund of the overpaid amount and also of the penalty collected. After the amount of tax is assessed, if there is a short payment, then any amount remaining due to his credit from the penalty will have

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to be adjusted towards the deficit amount. So, if there is some amount in the custody of the Government in the shape of penalty, that penalty amount will have to be adjusted towards any deficit that has got to be made up with regard to the amount assessed. If any adjustment has got to be made, that should be done. He should not be compelled to pay the entire amount assessed and then he should not be asked to take refund of the penalty amount in a separate proceeding. Again if after adjustment any balance of the penalty is outstanding, it should be paid to him promptly. Just as we expect promptness in the case of the dealer, just as we expect him to pay the tax promptly, we should also be prompt in refunding the amounts due to him. As the motto goes, do unto others as you wish to be done by; when the Government are prompt in collecting their dues from the dealers, they should also be prompt in refunding the amounts due to the dealers. There are the amendments that I have suggested.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, I am at considerable pains to understand the amendments in the first instance. So far as the first amendment of my hon. Friend Sri Krishnaswamy Ayyangar is concerned, I think the language of the existing clause clearly brings out that the person whose turnover is reassessed on the basis of his own information will be asked to pay the admitted tax in respect of that application. No application shall be entertained under this sub-section unless it is accompanied by satisfactory proof of the payment of tax admitted by the applicant to be due. (Interruption.) I want to make it clear that in a case where there has been an assessment and then there is an application for reassessment, the person who seeks reassessment should pay what he admits is the proper assessment, and that then only his application can be entertained. Anything that has been paid would amount to be the tax admitted. If he does not admit the amount as tax, then he need not pay that. I will quote a concrete case. If there has been an assessment for a turnover of Rs. 1,00,000 and the applicant says that the turnover should have been assessed only at Rs. 75,000, he has only to pay tax on the admitted amount of Rs. 75,000 and ask the case to be reassessed. If he has paid any amount earlier, then the amount that has been paid would be the amount admitted. The amount admitted means the amount that is payable on the admitted turnover of Rs. 75,000 in the instance which I have cited. Therefore, it does not in any way confuse any one and I do not think the amendment is necessary.

Then, with regard to the next amendment that any amount overpaid by the dealer shall be refunded to him, that means not only the amount which he paid by way of tax, but penalty also. Here the word used is not ' tax '. The language is not ' any *tax* overpaid by the dealer ', but ' any *amount* overpaid by the dealer ' and the word ' amount ' includes not only the tax paid but also the penalty paid. Therefore, even that amendment does not appear to be necessary.

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Similarly, Sir, in sub-clause (3) where the penalty is levied, it has got to be refunded by the Government. It is very difficult to set a time-limit for the refund of the penalties by the Government because it may depend on various factors; it is not possible to limit the time in respect of that. I regret I am unable to see the advantage of accepting these amendments.

SRI P. S. KRISHNASWAMY AYYANGAR : Since the Hon. Minister says that any amount overpaid will also include penalty, I am not pressing my amendments.

The amendments were, by leave, withdrawn.

Clause 14 was put and carried.

Clauses 15 to 19 were put and carried.

Clause 20.

MR. CHAIRMAN : The motion is—

"The clause 20 do stand part of the Bill."

SRI K. BALASUBRAMANYA AYYAR : Sir, in sub-clause (2) of clause 20 it has been stated that notwithstanding anything contained in sub-section (1), every dealer, etc.—there are 4 or 5 categories—shall get himself registered under this Act, irrespective of the quantum of his total turnover in such goods. On the other hand, I am suggesting that if his total turnover in such goods does not exceed five thousand rupees, he need not get himself registered. Therefore, Sir, I move the following amendment :—

'In sub-clause (2), add the following proviso at the end :—

"Provided that a dealer carrying on business in all or any of the goods mentioned in the First and Second Schedules need not get himself registered, if his total turnover in such goods does not exceed five thousand rupees."'

SRI V. V. RAMASWAMI : I second it, Sir.

* SRI M. PATANJALI SASTRY : Mr. Chairman, as regards clause 20, I wish to bring to your notice that this clause provides that every dealer, whose total turnover in any year is not less than Rs. 7,500, shall get himself registered. But dealers whose turnover is less than Rs. 10,000 are exempted from the general levy of two per cent. I do not understand precisely the significance of compelling every dealer whose turnover in any year is more than Rs. 7,500 but less than Rs. 10,000 to get himself registered.

5-20 p.m. Unless the registration has to be with reference to the purpose of the Act, that is, for imposition of the tax, it will be an unreasonable restriction upon the fundamental right of a citizen to carry on the trade as he likes. To carry on a trade freely is a fundamental right provided under Article 19 of the Constitution. Article 19 (1) (g) says that all citizens shall have the right to practise any profession or to carry on any occupation, trade or business. Therefore, a person shall be entitled to carry on a trade,

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subject to 'reasonable restrictions'. Article 19 (6) stipulates 'nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, etc., etc.' So, it is a fundamental freedom given to any person to practise any profession, trade or business. Of course, it gives the right to the State to impose reasonable restrictions, in the general interest of the public. It has been held by the Supreme Court that a 'restriction' would be 'reasonable' if it is relevant to the purpose of the ct. The restriction here is that he must get himself registered, paying a fee of Rs. 10. If he does not do that, he is liable to a penalty; his property is liable to be attached and brought to sale by a distress warrant for the levy of the fee due from him. So, all these restrictions, unless they are germane to the purpose of the levy of the tax, would contravene the fundamental right.

I say—subject to correction—I am not able to see exactly the object of this compulsory registration. It would be an unreasonable restriction if dealers with a turnover of less than Rs. 10,000 who are not taxable are required to get themselves registered. If it is more than Rs. 10,000, I can understand. Why this Rs. 7,500 limit? Of course, in the old Act, the exemption limit was Rs. 7,500 and, apparently it has been repeated here by inadvertence. It is for the Hon. Minister to clarify the position. To me it seems—subject to correction—that the limit of Rs. 7,500 has crept in without any purpose relevant to the imposition of the tax.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, persons who have transactions over Rs. 10,000 are liable to tax and in order to find out whether a person has transactions up to Rs. 10,000 or more, Government call upon persons who are having transactions near about it to register themselves. So far as this is concerned, it is for the purpose of assessing persons who have transactions over Rs. 10,000 that the law prescribes that people who are having transaction to the value of Rs. 7,500 and more shall register themselves, so that by scrutiny of their accounts it may be seen whether they come within the Rs. 10,000 limit. It is not an unreasonable restriction. If we say that every person who carries on a trade or business should register himself, when the tax is only on transactions over Rs. 10,000, then it might be an unreasonable restriction. But so far as the limit of Rs. 7,500 is concerned, it is intended to locate the particular class of people who are likely to come within the assessment level and therefore, this limit of Rs. 7,500 has been fixed. I do not think it is an unreasonable restriction.

With regard to the other point raised by the hon. Member Sri Balasubramanya Ayyar, it has already been explained that all persons dealing in commodities bearing single-point levy should be taxed irrespective of the turnover and here if we say that the

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persons who have transactions involving less than Rs. 5,000 in a year need not register themselves, it will be again difficult to locate the persons. In fact, the principle of levying single point tax is to see that the persons are definite, the commodity is definite and location is definite as also assessment. So, in order to enable proper assessment, we say that every person who deals in commodities bearing a single-point tax should get himself registered.

The amendment was, by leave, withdrawn.

Clause 20 was put and carried.

Clauses 21 to 26 were put and carried.

Clause 27.

MR. CHAIRMAN : The motion is—

'That clause 27 do stand part of the Bill.'

SRI A. GAJAPATHY NAYAGAR : Sir, I move the following amendment :—

"In the proviso to clause 27, after the word 'transferee' and before the words 'of the arrears of taxes', insert the words '*inter vivos* or by operation of law'."

The purpose of my amendment is this, Sir. Clause 27, first part, says, ' . . . any tax or other amount due up to the date of transfer and any tax or other amount due up to the date of transfer though unassessed . . . be recovered from the transferee'. Here it is somewhat indefinite. I want to make it quite clear that the word 'transferee' will include a transferee *inter vivos* or by operation of law. If the intention of the clause is to include such persons, I do not press my amendment. Only I want to make the position clear. I want through my amendment to include not only transferees *inter vivos* but also by operation of law. If that is the meaning intended, I do not want a seconder.

The amendment was duly seconded.

THE HON. SRI R. VENKATARAMAN : That is so.

The amendment was, by leave, withdrawn.

Clause 27 was put and carried.

Clauses 28 to 44 were put and carried.

Clause 45.

MR. CHAIRMAN : The motion is—

'That clause 45 do stand part of the Bill'.

* SRI V. V. RAMASWAMI : Sir, I move the following amendments :—

"In sub-clause 2 (e), delete the words 'simple imprisonment which may extend to six months or' and 'or both'."

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" In sub-clause 3 (*b*), delete the words ' simple imprisonment which may extend to six months or' and 'or both'."

SRI K. BALASUBRAMANYA AYYAR : I second the amendments, Sir.

*SRI V. V. RAMASWAMI : ஆறு மாத தண்டனை என்பது ரொம்பவும் கடுமையாகயிருக்கிறது என்று ஆரம்பத்திலேயே என் பேச்சில் கூறியிருக்கிறேன். அவர்கள் மேலிட்டு வியாபாரம் செய்யாமலிருக்க அபராதத் தொகையை அதிகப்படுத்தினாலே போதும். இல்லாவிட்டால் இது ஊழல்களுக்கு இடம் அளிப்பதாக இருக்கும். இன்கம்டாக்ஸ் ஆக்டில் இது போன்று இருக்கிறது. ஆகவே, இந்தத் திருத்தத்தைக் கொடுத்திருக்கிறேன். இதை ஒப்புக்கொள்ளவேண்டுமென்று கேட்டுக்கொள்கிறேன்.

* THE HON. SRI R. VENKATARAMAN : I explained in the course of my reply to the general debate that this was only in respect of matters which were of a criminal nature, that is, wilfully obstructing or fraudulently submitting false accounts and so on. Even there, the first offence is not punishable with imprisonment but it is the second and the subsequent offence that is punishable, with imprisonment. It is also found in other comparative enactments like the Andhra Sales Tax Act. Therefore, I oppose the amendment. 5-30 p.m.

SRI A. M. ALLAPICHAI : Sir, is not concealment of account an offence under the Indian Penal Code?

* THE HON. SRI R. VENKATARAMAN : Sir, I would like to be educated how concealment of account will become an offence under the Indian Penal Code.

MR. CHAIRMAN : I shall put the amendments of Sri V. V. Ramaswami to vote. The question is—

' In sub-clause (2) (*e*), *delete* the words " simple imprisonment which may extend to six months or " and " or both ".'

' In sub-clause 3 (b), *delete* the words "simple imprisonment which may extend to six months or " and " or both ".'

The amendments were put and lost.

Clause 45 was put and carried.

Clauses 46 to 52 were put and carried.

SRI P. S. KRISHNASWAMY AYYANGAR : Sir, I have got a word to say with regard to clause 52.

MR. CHAIRMAN : It has been passed. We are now in clause 53.

Clause 53.

MR. CHAIRMAN : The motion is—

' That clause 53 do stand part of the Bill.'

SRI K. BALASUBRAMANYA AYYAR : Sir, I move the following amendments :—

' In sub-clause (4), for the words " *Fort St. George Gazette*", substitute the words " prescribed manner ".'

Sir, sub-clause (4) says—

'All rules made under this section shall be published in the *Fort St. George Gazette*, and upon such publication shall have effect as if enacted in this Act.'

I say that publication in the *Fort St. George Gazette* alone will not do. Representations were made at the time of the Select Committee meeting that if the rules were published merely in the *Fort St. George Gazette*, people were not able to know them all. It is not possible to read them. A few people are given copies and others are not given copies. Therefore, I would request that they may be published not only in the Gazette but also in other papers. For that purpose, I have moved the amendment. Dr. Lokanathan also has mentioned about this in his Report. If they are published in the Gazette alone, the traders may not know them at all.

SRI V. V. RAMASWAMI : I second the amendment.

* SRI P. S. KRISHNASWAMY AYYANGAR : I have not given notice of any amendment to this clause. I have got a word to say with regard to sub-clause (3) of clause 53. Sub-clause (3) makes a breach of certain rules punishable and continuing breaches also are made punishable. Continuing breaches that are to be taken into consideration for subsequent punishment are breaches according to the wording in the sub-clause continuing from the day immediately following the first breach. That would include even the breaches that were committed between the date of the commencement of the prosecution for the first breach and the date of conviction. Until a conviction is made, a man should be deemed to be innocent and till the date of conviction a man might have persisted in his course of conduct under the *bona fide* belief that his position was correct. But the wording as it is would say that even for his conduct during that period, during the interim period between the date of launching of the prosecution for the first breach and the date of conviction, he should be mulcted with fine. That would be very harsh. Rather such a provision would make the law look, as it were, a bit draconian. The subsequent breach should be one which has happened after the conviction. If even after conviction a man persists in his conduct, no doubt he is a culprit and he should be punished. But if before conviction he has been following a particular course of action for which he has been brought to Court, he may *bona fide* be believing that his conduct was correct till a conviction is made. For his conduct during that period no punishment should be inflicted on him. I wanted to make this position clear and it is therefore that I say that it should be 'any subsequent breach made after the conviction'. It should be amended in that way.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, the language of the clause is very clear. The clause says, 'The Government may provide that a person guilty of a breach thereof shall be punishable with fine which may extend to one thousand rupees'. That is to say, only when a Court convicts him, he becomes punishable. Until then he is only an accused person.

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Therefore, the first punishment will take effect from the date of the conviction. Then, the second continuing offence will be punishable only if it continues after the date of the first conviction because the language used in this clause clearly says, ' where the breach is a continuing one, with further fine which may extend to fifty rupees for every day after the first during which the breach continues.' ' The first ' there refers to the first conviction. Therefore, there can be no question of a person being punished for his conduct during the period when the offence has not been proved.

Then, with regard to the amendment of the hon. Member Sri Balasubramanya Ayyar, the Government are alive to the necessity for wide publicity for the various rules that are made from time to time. Therefore, they have decided to have a separate departmental Gazette published by the Commercial Tax Department and all rules, notifications, etc., will be published in the Departmental Gazette besides the *Fort St. George Gazette*. I should think that this would satisfy the hon. Member Sri Balasubramanya Ayyar and that the amendment is not necessary.

The amendment was, by leave, withdrawn.

Clause 53 was put and carried.

Clauses 54 to 58 were put and carried.

Clause 59.

MR. CHAIRMAN : The motion is—

' That clause 59 do stand part of the Bill.'

The amendment given notice of by the hon. Member Sri K. Balasubramanya Ayyar is negative in character and it is not in order. He can speak on the clause if he so desires.

SRI K. BALASUBRAMANYA AYYAR : I can oppose the clause and vote against it?

MR. CHAIRMAN : Yes.

• SRI M. PATANJALI SASTRY : Sir, sub-clause (1) of clause 59 says, ' The Government may, by notification, alter, add to or cancel any of the Schedules.' If the alteration is in the nature of further items being included in the Schedule, that would clearly amount to imposition of tax by notification by the Executive. The Constitution categorically says—there is no ambiguity about it—that no tax shall be levied or collected except by authority of law. Therefore, it would be a clear contravention of the Constitutional provision. Of course, as the Hon. Minister explained on the previous occasion in his reply to the general debate, if the alteration is not to impose additional tax, it may pass muster. If it is cancellation, of course, it does not matter; the people would have the benefit of it. But if it involves addition, it would amount to

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5-40 p.m. imposition of tax. If the alteration or addition to ' involves the imposition of a tax, I venture to submit that it would be a clear contravention of a categorical provision of the Constitution. All that the Hon. Minister was able to say yesterday in defence of this was that an Act of Parliament—the Indian Tariff Act—had a similar provision. But that has not been tested in a Court of Law. There have been numerous cases in which the Imperial Acts have been held unconstitutional and knocked down by the Supreme Court and the High Courts. Merely because a Central Act uses a similar formula, it does not ensure its Constitutional validity. On the other hand, looking at the Article of the Constitution, this clearly flies on the face of it. Therefore, I appeal to the Government to reconsider their attitude in this matter. Merely because a Central Act has a similar provision and that this is modelled on it, it would not validate it.

SRI MOHAMED RAZA KHAN : I do not like to add to what we have already stated. Yesterday the Hon. Minister replied no doubt, but not effectively—I do not like to use the word ' properly '. When I pointed out a possible contingency, the Hon. Minister promised to reply to it while replying to the debate. My point was this, Sir. Suppose in any year the Finance Minister feels that there is a deficit or that he has to spend some more money on some developmental activities or other schemes and that he has to raise new funds. All along we have been accustomed to certain taxation proposals in the Budget Memorandum or the Budget Speech. But it takes time for those proposals to be implemented. Mostly the proposals will be there. Then they should come in the form of a Bill. Then there will be discussion in the Legislature, in the Select Committee, if possible, and so on. Now, according to this clause, if the Finance Minister thinks that the multi-point tax at 2 per cent should be raised to one at 3 per cent, he may make these proposals on the 2nd March and on the 1st April by a mere notification, he will try to implement the proposal. Because this clause gives power to Government even to alter the Schedules by notification, the Hon. Minister may change the tax from single point to multi-point, or he may raise the rate of tax from one per cent to two per cent. I want to know whether that could be done.

Sir, another question is this. No doubt, there is a proviso saying that the notification should be embodied in the form of a Bill and introduced in the Legislature and that if that is not passed within six months, it will cease to have effect. Well, that is another thing. The moment a notification is made, it is as good as becoming a law, if not more. I think the Hon. Minister will clarify the point which I have raised.

* THE HON. SRI R. VENKATARAMAN : Mr. Chairman, Sir, I explained in the course of my reply to the debate and also even when I moved that the Bill be taken into consideration that the

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Constitutional validity of this particular provision had not been challenged in the Supreme Court in any case and that, therefore, it had not been held to be unconstitutional.

SRI M. PATANJALI SASTRY : That is true.

* THE HON. SRI R. VENKATARAMAN : I said that the clause was almost word for word identical with the provision in the Indian Tarig Act. I also pointed out that the amendment to the Indian Tarig Act embodying this particular provision was made after the framing of the Constitution. If it were before that, there may be some doubt as to the validity of that particular clause in the light of the Constitution that has been framed. But here since this was passed after the Constitution had been framed, I take it, Sir, that it is valid and that legal opinion would have been taken by the Government of India on this matter before they brought forward this particular provision.

Then, Sir, with regard to the point raised by the hon. Member Sri Raza Khan, I desire to point out that instances may arise where it is necessary even in the public interest to exercise this power. For instance, let us take the case which he himself cited. Suppose the Government propose to raise the sales tax on foodgrains from one per cent to five per cent. Now, if they have no power to notify it, between the date on which the proposal is made that we are going to raise the tax from one per cent to five per cent and the date on which it is actually raised, people will corner foodgrains and they will not sell them to anybody because at the end of the month, the prices will go up by five per cent. Everybody will try to buy them now and keep them in order to take advantage of the higher price which they would fetch. Actually this sort of thing is happening in trade very often and that is why, I said, I have brought forward clause 60 in this very Bill in order to prevent people from cornering the goods and not selling them because certain items which are now in the multi-point levy are going over to the single-point levy. Therefore. I venture to submit that on extraordinary occasions like that, it might become necessary. But whether such extraordinary occasions would arise or not is too much for anybody to say at present.

Another objection which was raised was that even if the notification was changed or modified by the Legislature, then to the extent of tax collected it would be valid. Here again, I wish to point out that there is the same langauge in the Tariff Act. Sir, the difficulty is this. Suppose the tax is reduced. To whom should the Government refund the tax? According to Government, it is a consumer tax paid by the people. You want the merchants to benefit by it merely because we reduce the tax. I will take a concrete instance. Suppose the Government by notification levy a tax of, say, five per cent on radios and when the notification is introduced in the Legislature, they feel that it is not necessary to

levy five per cent or that the commodity will not bear it and they want to reduce it to 3 per cent. To whom are we to refund the balance of two per cent that has been collected already?

SRI V. V. RAMASWAMI : You would have already expended.

* THE HON. SRI R. VENKATARAMAN : That two per cent should be given to those people from whom it was collected, namely, the dealers. They are not the persons who have borne the tax and it is not proper that they should get the benefit of the tax which they have collected from the people. That is why it has been provided like that. As I said in the beginning, as a result of cornering and other things, that would happen. That we want to prevent and that is why the need for it arises. In the normal transactions where there is no cornering, it is possible to refund. Therefore, I do not think that it would be proper to refund it to the merchants. Certainly they should not benefit by it. The tax has been collected from the consumers and, therefore, it should go to the consumers. There is no way of paying it to the consumers and, therefore, it is not possible to provide for refund. I, therefore, submit that this clause as it stands should be accepted by the House.

SRI K. BALASUBRAMANYA AYYAR : May I refer to a point that has not been answered? Suppose the Government collect an additional tax by means of a notification. Afterwards the notification comes before the Legislative Assembly and the Council and we say that we will not accept the collection of additional tax. The clause says that this notification is no longer valid because the notification has been cancelled by the Legislature. Therefore, it ceases to be a valid notification. Then Article 265 is flatly contradicted because you impose a tax and collect it without the authority of a law.

5-50 p.m. * THE HON. SRI R. VENKATARAMAN : My submission is this. The tax is collected in pursuance of the Madras General Sales Tax Act. It is not collected without the authority of a law. All that Article 265 says is that it shall be collected in pursuance of a law.

SRI K. BALASUBRAMANYA AYYAR : It should be imposed by authority of law.

* THE HON. SRI R. VENKATARAMAN : Already the impost is made. So far as this is concerned, the Sales Tax Law here allows me to collect the tax. It is not like exactions against feudal lords. It is levied under the law. This notification is allowed under the law. The law permits it. Of course, you can challenge that the law is not valid and that point I have already answered. It was not levied without a proper sanction. The impost was made with reference to and in pursuance of a law. Then the percentage of the impost is in pursuance of the provisions of the law. You may say that the law is *ultra vires* of the Constitution and you may set the law at naught. But I do not think Article 265 of the Constitution would in any way create any difficulty. But I agree in

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substance that the Government would have collected the money and that because of the difficulty as to whom it has to be repaid, they may have to keep it. Now Sri Balasubramanya Ayyar can swallow it. (Laughter) I shall give instances where it has to be swallowed. Suppose a person who is not entitled to collect sales tax has collected tax. There we have the provision saying that the amount so collected shall be taken by the Government. In that case it has to be swallowed. There is a case in which a person collects higher rate than what is allowed under the law. There, Government say, ' Well, you have no right to hold it. Government should hold it '. For, Government should hold it as *residuary legatee.*

SRI MOHAMED RAZA KHAN : Sir, on a point of explanation. I quite agree with the Hon. Minister that they could not decide to whom the refund of the tax should go. It is not one person. It is convenient to say so. In the case of some skins and hides merchants, there was some confusion. After three years, the sales tax authorities came to the conclusion that some of the merchants had to pay the tax but they were in doubt previously whether they should pay or not. Suddenly, Government came and told them that they had to pay and they would collect the tax for the three years. It resulted in many traders and businessmen being hard hit, not hundreds of them, but thousands of them, with the result that many of them had to go out of business. While it is to the advantage of the Government, they do things like this. If it is to the advantage of the other party, they have a different standard. The present Minister for Industries perhaps is not aware of that, for he was not in charge of Sales Tax then.

Clause 59 was put and carried.

Clauses 60 and 61 were put and carried.

Schedule I.

MR. CHAIRMAN : The motion is—

' That Schedule I do stand part of the Bill.'

* THE HON. SRI R. VENKATARAMAN : Sir, there are a few printing mistakes, namely,—

In column (4), against item 52, the rate of tax 6, has been omitted;

In column (4), against item 52, the rate of tax6, has been omitted.

Sir, these are the two corrections which have to be made. I do not think an amendment is necessary. These are only printing mistakes and they could be rectified.

Schedule I was put and carried.

Schedule II.

MR. CHAIRMAN : The motion is—

'That Schedule II do stand part of the Bill.'

SRI MOHAMED RAZA KHAN : Sir, I move the following amendment :—

"In column (4), against item 7 (*a*), in the Second Schedule, for the figure '2', substitute the figure '1'."

SRI K. BALASUBRAMANYA AYYAR : I second the amendment, Sir.

SRI MOHAMED RAZA KHAN : Sir, I think there is no point in moving my amendment. For the Hon. Minister has already made up his mind and at the fag-end of the day, I do not think he would be obliging me by accepting this amendment. A very pertinent point was raised by the hon. Member Sri Patanjali Sastry.

THE HON. SRI R. VENKATARAMAN : Sir, since there is also the third reading of the Bill yet, I do not think we could finish it to-day. We may perhaps meet tomorrow morning at 11 o' clock, if it suits the House.

DR. MAHOMED USMAN : We have all fixed up engagements for tomorrow.

SRI MOHAMED RAZA KHAN : Anyhow, we can meet tomorrow. I shall require fifteen minutes for my speech on my amendment. Then there is the reply of the Hon. Minister.

MR. CHAIRMAN : I think the House agrees to meeting tomorrow morning.

The House will now adjourn and meet against at 11 a.m. tomorrow.

The House then adjourned.

V.—PAPER LAID ON THE TABLE OF THE HOUSE.

110. *Notification issued with G.O. Ms. No. 4521, Revenue, dated 22nd December 1958, regarding amendments to the Madras General Sales Tax Rules, 1939.*

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